

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

BOARD STAFF'S REVIEW OF
PETITION FILE NO. 540

Petitioner: Mr. Larry Bornstein

Submitted By: Maryrose Chan
Title: Senior Safety Engineer
Date: March 26, 2014

INTRODUCTION

On February 15, 2014, Larry Bornstein, a concern citizen, submitted a petition to address the hazard (musculoskeletal injury) associated with manually retrieving shopping carts from the parking lot and bringing them back to the store. The petitioner appears to be advocating the use of electronic cart pushers.

NATIONAL CONSENSUS STANDARDS

No consensus standard exists that directly applies to this issue.

FEDERAL OSHA STANDARDS

No federal standards exist that apply to shopping cart retrieval either manually or electronically.

STAFF EVALUATION

Retail shopping carts are part of everyday commerce, providing a convenient way for patrons to bring their goods to their vehicles. They are used in small retail shops and big box stores. These carts range in size and weight. For example, shopping carts in Trader Joe's are smaller than the carts in Costco, Walmart, or Sam's Club.

California has existing standards that may address the concern of the petitioner. One is California Code of Regulations, Title 8, Section 5110 which reads as follows:

(a) Scope and application. This section shall apply to a job, process, operation where a repetitive motion injury (RMI) has occurred to more than one employee under the following conditions:

(1) Work related causation. The repetitive motion injuries (RMIs) were predominantly caused (i.e. 50% or more) by a repetitive job, process, or operation;

(2) Relationship between RMIs at the workplace. The employees incurring the RMIs were performing a job process, or operation of identical work activity. Identical work activity means that the employees were performing the same repetitive motion task, such as but not limited to word processing, assembly or, loading;

(3) Medical requirements. The RMIs were musculoskeletal injuries that a licensed physician objectively identified and diagnosed; and

(4) Time requirements. The RMIs were reported by the employees to the employer in the last 12 months but not before July 3, 1997.

If this section applies to an establishment, the employer is required to establish and implement a program that minimizes RMI. The program includes: worksite evaluation(s), implementation of control measures and providing training to employees.

It is possible that this Section may not apply. For some establishments, retrieving carts may be a collateral task in addition to their other duties and, therefore, not repetitive enough to meet Subsection (a)(1).

Another Title 8 regulation that potentially addresses this problem is Section 3203, which governs the Injury Illness Prevention Program (IIPP). Section 3203 reads as follows:

(a) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum:

(1) Identify the person or persons with authority and responsibility for implementing the Program.

(2) Include a system for ensuring that employees comply with safe and healthy work practices. Substantial compliance with this provision includes recognition of employees who follow safe and healthful work practices, training and retraining programs, disciplinary actions, or any other such means that ensures employee compliance with safe and healthful work practices.

(3) Include a system for communicating with employees in a form readily understandable by all affected employees on matters relating to occupational safety and health, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal. Substantial compliance with this provision includes meetings, training programs, posting, written communications, a system of anonymous notification by employees about hazards, labor/management safety and health committees, or any other means that ensures communication with employees.

EXCEPTION: Employers having fewer than 10 employees shall be permitted to communicate to and instruct employees orally in general safe work practices with specific instructions with respect to hazards unique to the employees' job assignments as compliance with subsection (a)(3).

(4) Include procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices. Inspections shall be made to identify and evaluate hazards.

(A) When the Program is first established;

EXCEPTION: Those employers having in place on July 1, 1991, a written Injury and Illness Prevention Program complying with previously existing section 3203.

(B) Whenever new substances, processes, procedures, or equipment are introduced to the workplace that represent a new occupational safety and health hazard; and

(C) Whenever the employer is made aware of a new or previously unrecognized hazard.

(5) Include a procedure to investigate occupational injury or occupational illness.

(6) Include methods and/or procedures for correcting unsafe or unhealthy conditions, work practices and work procedures in a timely manner based on the severity of the hazard:

(A) When observed or discovered; and,

(B) When an imminent hazard exists which cannot be immediately abated without endangering employee(s) and/or property, remove all exposed personnel from the area

except those necessary to correct the existing condition. Employees necessary to correct the hazardous condition shall be provided the necessary safeguards.

(7) Provide training and instruction:

(A) When the program is first established;

EXCEPTION: Employers having in place on July 1, 1991, a written Injury and Illness Prevention Program complying with the previously existing Accident Prevention Program in Section 3203.

(B) To all new employees;

(C) To all employees given new job assignments for which training has not previously been received;

(D) Whenever new substances, processes, procedures or equipment are introduced to the workplace and represent a new hazard;

(E) Whenever the employer is made aware of a new or previously unrecognized hazard; and,

(F) For supervisors to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed.

The IIPP regulation requires employer to identify and correct hazards in the workplace. It is a performance based standard allowing the employer to use its judgment in correcting the hazards. The potential musculoskeletal hazard from retrieving the carts can be addressed by the employer by implementing a variety of control measures such as, but not limited to:

- (1) Periodically inspecting the carts
- (2) Repair or replace carts that are not functioning properly
- (3) Train employees on the proper way to retrieve carts. This may include retrieving fewer carts at a time or using electric cart pushers.

RECOMMENDATION

There is no evidence that the use of electrical cart pushers is necessary or optimum in all situations. The current provisions of Section 3203 and 5110 allow the use of such devices as another option and since there is no clear evidence that these existing regulations do not address this situation adequately, the need for a new prescriptive regulation is not apparent.

For these reasons, Board staff recommends that this petition be denied.